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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 9 of the Communications Act	)	MD Docket No. 94-19
	)	
Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year	)	

COMMENTS OF
AMERICAN TELEPHONE AND TELEGRAPH COMPANY

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, American Telephone and Telegraph Company ("AT&T") hereby submits its comments in response to the Notice of Proposed Rulemaking in MD Docket No. 94-19 ("Notice").[1]

With the Notice, the Commission has begun the process of implementing new Section 9 of the Communications Act, which authorizes the Commission to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement activities, policy and rulemaking activities, user information services, and international activities.[2]

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1 Implementation of Section 9 of the Communications Act-Assessment and Collection of Regulatory Fees for the Fiscal Year 1994, MD Docket No. 94-19, FCC 94-46, released March 11, 1994.

2 47 U.S.C. § 159(a).

Section 9 allocates these costs to the entities regulated by the Commission through a schedule that establishes certain "regulatory fee categories" and amounts payable under each such category.[3] For example, the interexchange carrier fee category is assigned a total of $8.3 million in costs, which is further allocated to particular IXCs through a fee set at $60 per 1000 presubscribed lines.[4]

Sections (b)(2) and (3) of the statute, however, authorize the Commission to make adjustments and amendments to the fee schedule where necessary to comply with paragraph (b)(1)(A), which sets out general principles that are to govern the assessment and allocation of fees.[5] The Notice (¶ 78) therefore seeks

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[3] Section 9 in nearly all material respects is "virtually identical" (H. Conf. Rep. No. 103-213) to legislation passed by the House of Representatives in 1991 (HR 1674), and the Conference Report (p. 499) accompanying Section 9 incorporates by reference the House Report on HR 1674 (H.R. Rep. No. 207, 102d Cong., 1st Session 1991)("House Report"). According to the House Report (p. 16), the fee schedule is ultimately supposed to "align the revenue each of the Bureaus receive from the users it regulates with the costs each of that Bureau budgets for performing its functions," and ensure "an equitable distribution of the fees among entities within a given industry."

[4] Notice, p. 47 (Appendix C).

[5] 47 U.S.C. § 159(b)(2)(3). Section (b)(1)(A) provides that fees should be "reasonably related to the benefits provided to the payor of the fee by the Commission's activities, . . . and other factors that the Commission determines are necessary in the public interest." 47 U.S.C. § 159(b)(1)(A).

comment with respect to the "specific regulatory fee multipliers" set forth in the schedule, and urges commenters to "propose specific alternatives" which the Commission may adopt as amendments or recommend to Congress.

In response to these requests, AT&T urges the Commission to replace the current fee multiplier for IXCs, presubscribed lines, with a multiplier based on each carrier's relative share of total IXC gross revenues for the preceding calendar year. Such a change would result in a more "equitable distribution of the fees among entities within a given industry," as Congress intended,[6] would be consistent with Commission policy as well as actions in analogous proceedings, and can be administered without imposing additional administrative burdens on the Commission or carriers.

First, an allocation methodology based on presubscribed lines does not adequately distribute fees among all services because it completely fails to account for services that use dedicated facilities (i.e., private line), and thus the providers of those services. Indeed, it was for this very reason that the Commission only months ago correctly rejected a proposal that Telecommunications Relay Services fund assessments be

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[6] House Report, p. 16.

allocated based on presubscribed lines, and instead chose to allocate them based on "each interstate service provider's relative share of gross interstate revenues" -- the same methodology proposed by AT&T here.[7]

The Notice recognizes that costs should be allocated among all services that "result in the Commission incurring costs for necessary regulatory functions."[8] It therefore specifically proposes to modify the fee schedule for 1995 to reflect certain services and licensees that have been omitted from the current schedule.[9] By the same logic, the Commission should modify the schedule for IXCs by replacing the line-based mechanism with a revenue-based mechanism, which (in contrast to the former) will capture private line services. These services, like switched services, also result in the Commission incurring costs for regulatory functions such as rulemaking and enforcement.

Second, as AT&T has elsewhere demonstrated, allocation mechanisms based on presubscribed lines do not

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[7] See Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, 8 FCC Rcd. 5300, 5303 (1993)(rejecting allocation mechanism based on providers' relative shares of switched services because it "would not account adequately for services that use dedicated facilities").

[8] Notice, ¶ 60, n.52. See also ¶ 6.

[9] Id. at ¶ 60, n.52.

accurately reflect the various IXCs' share of switched services and thus does not equitably allocate costs even among switched service providers.[10] The Commission has often held that charges imposed upon IXCs must "not unduly favor some IXCs at the expense of others."[11] The current line-based regulatory fee allocation mechanism fails this fundamental requirement of nondiscrimination among competing IXCs. Many presubscribed lines generate little or no interstate calling. AT&T's competitors have targeted their marketing toward more profitable high volume customers. Because of AT&T's anomalous position as the "carrier of last resort" for low volume users, its customers average significantly less usage and revenue per line than customers of other IXCs.[12] According to the most recent data available, AT&T has 72.4% of presubscribed lines, but its share of toll service

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10 See Petition of AT&T, CC Docket Nos. 78-72, 80-286, filed November 24, 1993 ("AT&T USF Petition").

11 See Petitions for Waiver of Various Sections of Part 69 of the Commission's Rules, Memorandum Opinion and Order, FCC 86-145, released April 28, 1986, ¶ 95 ("Alternative Access Charge Order").

12 As shown in AT&T's USF Petition (p. 9), average usage per AT&T-presubscribed line is only 174 access minutes per month, generating average revenues of $29.23 per month, as compared with 306 minutes and $53.03 per month for AT&T's competitors.

revenues is only 59.6%.[13] The flat rate, per line regulatory fee contained in the current schedule thus results in AT&T's customers paying a disproportionate share of the total revenue requirement.

Third, line-based allocation mechanisms violate Commission policy for another, independent reason: because they force IXCs to pay annual lump-sum charges for every presubscribed line, such mechanisms artificially discourage IXCs from seeking out and serving low volume users. Indeed, in its Alternative Access Charge Order, the Commission rejected a presubscribed line-based cost allocator precisely because it would have created an artificial disincentive to serve low volume users.[14]

For all of these reasons, AT&T urges the Commission to allocate the costs it incurs in regulating IXCs based on each carrier's share of gross IXC revenues, as opposed to presubscribed lines. A revenue-based system will avoid anticompetitive discrimination among IXCs because it accurately reflects market shares in the industry, and will thus ensure that each IXC pays its

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[13] Long Distance Market Shares, Third Quarter 1993, Industry Analysis Division, FCC, December 1993, pp. 11, 14.

[14] Alternative Access Charge Order, ¶ 99. See also AT&T USF Petition, pp. 10-11.

"fair share."[15] Such a system will likewise avoid exacerbating the current disincentives to serve low-volume customers. Finally, a revenue-based system can be administered without imposing additional burdens on the Commission or carriers, because the Commission can use for this purpose the same data it compiles in the process of assessing the revenue-based fees it collects for Telecommunications Relay Services.

Respectfully submitted,

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[15] House Report, p. 16.